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June 26, 2020

VIA ECF

The Honorable Alison J. Nathan
United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re Application of Benjamin Steinmetz for an Order to Take Discovery from Vale S.A., Vale Americas Inc., Rio Tinto plc, and Rio Tinto Limited Pursuant to 28 U.S.C. § 1782, Case No. 20-mc-00212-AJN (S.D.N.Y.)*

Dear Judge Nathan:

We write on behalf of Vale S.A. and Vale Americas Inc. (collectively, “Vale”) in connection with the above-referenced application of Benjamin Steinmetz (“Steinmetz”) to conduct discovery for use in foreign proceedings pursuant to 28 U.S.C. § 1782 (the “Application”) to request permission to file a redacted version of Vale’s Memorandum of Law in Opposition to the Application of Benjamin Steinmetz for an Order to Take Discovery Pursuant to 28 U.S.C. § 1782 (the “Vale MOL”) and to file under seal the Declaration of Samuel L. Levander in Support of the Vale MOL (the “Levander Declaration”). Vale respectfully seeks entry of an order substantially in the format attached hereto as Exhibit A (the “Proposed Order”). As described below, Steinmetz has consented to Vale’s filing these documents under seal.

I. Background

In the above-captioned action, petitioner Benjamin Steinmetz (“Steinmetz” or “Petitioner”) seeks an order pursuant to 28 U.S.C. § 1782 for discovery in aid of a foreign judicial proceeding (the “Application”). The Application is filed in connection with an action in

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the High Court of England and Wales (the “High Court”), captioned Vale S.A. v. Steinmetz, No. CL-2019-000723 (the “English Proceedings”), in which Vale S.A. is a plaintiff and Steinmetz is a defendant.

On December 3, 2019, the High Court granted a worldwide freezing order (the “WFO”) against Steinmetz, Dag Lars Cramer, Marcus Struik, Asher Avidan, Joseph Tchelet, David Clark, the Balda Foundation, and Nysco Management Corp. (together, the “Defendants”), finding that there was a real risk that the Defendants would dissipate their assets so that a judgment against them would go unsatisfied. Under the WFO, Steinmetz was obligated to disclose in writing all of his assets worldwide exceeding £25,000 in value, as well as information regarding the traceable proceeds of Vale’s \$500 million payment to BSG Resources Limited. See Declaration of Jeffrey A. Rosenthal in Support of Vale S.A. and Vale Americas Inc.’s Memorandum of Law in Opposition to the Application of Benjamin Steinmetz for an Order to Take Discovery Pursuant to 28 U.S.C. § 1782 and Vale S.A.’s Conditional Cross-Application to Compel Reciprocal Discovery Pursuant to 28 U.S.C. § 1782 (the “Rosenthal Declaration”), Ex. 8, Vale S.A. & Ors v. Steinmetz & Ors, No. CL-2019-000723, Freezing Order ¶ 11(1)-(3) (Dec. 3, 2019).

In his Application, Steinmetz claims that the discovery he seeks pursuant to 28 U.S.C. § 1782 is “urgent” because of the “substantial harm” caused by the WFO. See Memorandum of Law in Support of the Application of Benjamin Steinmetz for an Order to Take Discovery from Vale S.A., Vale Americas Inc., Rio Tinto plc, and Rio Tinto Limited Pursuant to 28 U.S.C. § 1782, ECF No. 3, at 24 (the “Steinmetz MOL”).

II. Legal Grounds for Sealing

As explained in the Vale MOL, Vale believes that Steinmetz has mischaracterized the status and procedural history of the English Proceedings, and the effect on him of the WFO. To correct Steinmetz’s mischaracterizations, Vale has sought, and the High Court has granted, permission to use Steinmetz’s Statement of Assets dated December 30, 2019, enclosed as the sole exhibit to the Levander Declaration, provided, however, that such filing is made under seal. See Vale S.A. v. Steinmetz, No. CL-2019-000723, Consent Order (June 22, 2020).¹ So as to comply with the High Court’s Order, Vale seeks leave to file publicly a redacted version of the Vale MOL (in which just one paragraph discussing the Statement of Assets is redacted) and to file the unredacted Vale MOL and the Levander Declaration under seal.

For the reasons stated above, Vale respectfully requests that the Court authorize it to file a redacted version of the Vale MOL and to file Exhibit A to the Levander Declaration under seal and any further relief deemed just, proper and equitable. Given that only Steinmetz and Vale are parties to the English Proceedings, Vale respectfully requests that the unredacted version of the Vale MOL and the Levander Declaration be made available only to Vale,

¹ Schedule B(9) of the WFO provides that the Claimants “undertake not to use without the permission of the Court any information obtained as a result of the [freezing order] for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction other than [for the purposes of the English Proceedings].” See Rosenthal Decl., Ex. 35, Vale S.A. v. Steinmetz, No. CL-2019-000723, Consent Order (June 22, 2020).

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Steinmetz, their respective counsel, and the Court. We are available at the Court's convenience to address any questions.

Respectfully submitted,

/s/ Jeffrey A. Rosenthal
Jeffrey A. Rosenthal

cc: Josef M. Klazen, Esq.
Michael S. Kim, Esq.
Robin Rathmell, Esq.
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